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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 JERRY LARA,

9 Petitioner

10 v.

11 THOMAS, et al.,

12 Respondents

Case No.: 2:18-cv-01650-GMN-VCF

ORDER

13
14 Petitioner Jerry Lara has submitted a § 2254 petition for a writ of habeas corpus and has
15 now paid the filing fee (*see* ECF Nos. 1-1, 5). The court has reviewed his petition, and it shall be
16 dismissed as second and successive.

17 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted
18 by this section is filed in the district court, the applicant shall move in the appropriate court of
19 appeals for an order authorizing the district court to consider the application.” Where a petition
20 has been dismissed with prejudice as untimely or because of procedural default, the dismissal
21 constitutes a disposition on the merits and renders a subsequent petition second or successive for
22 purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009);
23 *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

1 Petitioner indicates on the face of his petition that he seeks to challenge the state
2 judgment of conviction in case no. C-142216 (ECF No. 1-1, p. 2). Lara also states that he
3 previously filed federal habeas case no. 2:12-cv-00505-KJD-PAL, in which he challenged the
4 same state judgment of conviction. On February 11, 2013, this court dismissed the petition with
5 prejudice as untimely and procedurally barred, and judgment was entered (2:12-cv-00505-KJD-
6 PAL, ECF Nos. 28, 29). The Ninth Circuit Court of Appeals affirmed the dismissal of the
7 petition on October 29, 2015, and the United States Supreme Court denied Lara's petition for a
8 writ of certiorari on March 29, 2016 (2:12-cv-00505-KJD-PAL, ECF Nos. 39, 43).

9 This petition, therefore, is a second or successive habeas corpus petition. *Henderson*, 396
10 F.3d at 1053. Petitioner was required to obtain authorization from the Ninth Circuit Court of
11 Appeals before he could proceed. 28 U.S.C. § 2244(b)(3). Petitioner indicates that he has not
12 received such authorization from the court of appeals (ECF No. 1-1, p. 2).

13 Thus, this petition shall be dismissed with prejudice. Reasonable jurists would not find
14 this conclusion to be debatable or wrong, and the court will not issue a certificate of
15 appealability.

16 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the petition
17 (ECF No. 1-1).

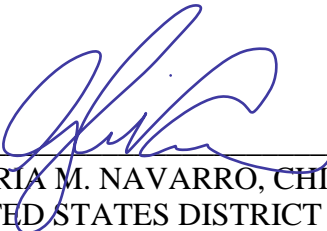
18 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** as set forth in this order.

19 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.
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1 **IT IS FURTHER ORDERED** that the ex parte motion for appointment of counsel (ECF
2 No. 2) is **DENIED** as moot.

3 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
4 and close this case.

5 Dated: January 10, 2019

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9 GLORIA M. NAVARRO, CHIEF JUDGE
10 UNITED STATES DISTRICT COURT
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